No. 16418

In the

United States Court of Appeals

For the Ninth Circuit

REX L. NEELY
Appellant,

vs.

UNITED STATES OF AMERICA
Appellee.

Appellant's Opening Brief

Appeal from the United States District Court,
District of Arizona

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NATURE OF CASE

The appellant Neely (defendant in the court below), and one Joe L. Short, were charged by Indictment filed on October 23, 1957, with violating Title 18, U.S.C.A., Sections 201, 202, 2073, and 371. Appellant was charged in Counts I, III, and V with tendering Short bribes in the form of certain checks drawn on the Valley National Bank, Mesa, Arizona, executed by the appellant and payable to the order of Short (18 U.S.C.A. 201).

In Counts II, IV, and VI, Short was charged with accepting the alleged bribes tendered in Counts I, III, and V (18 U.S.C.A. 202).

Counts VII to XI, inclusive, charged Short with making false and fictitious entries and charged Neely with aiding, abetting, and inducing Short to commit said acts (18 U.S.C.A. 2073).

Count XII charged appellant and Short with conspiracy (18 U.S.C.A. 371).

The conspiracy count embraced, among other substantive counts, the count on which appellant was convicted (14).

Short was, at the times mentioned in the Indictment, an employee of the Pinal County Agricultural Stabilization and Conservation Committee. Appellant was, during said times, a farm operator.

Defendant Short was convicted on all counts in which he was charged, either individually or jointly with appellant, except Count XII, the conspiracy count. Appellant Neely was acquitted on all counts in which he was charged, either individually or jointly with Short, except Count V (tendering a bribe (18 U.S.C.A. 201) (6).*

Appellant duly filed a motion to dismiss the Indictment and each and every count thereof on the ground that each count was fatally defective in that it did not state facts sufficient to constitute an offense against the United States (16). This motion was filed on November 5, 1957, and was denied on November 27, 1957 (17).

After appellant's conviction on Count V, appellant filed motions in arrest of judgment and for a new trial (20, 21). These motions were filed on October 6, 1958, argued on October 27, 1958 (22), taken under advisement, and denied on December 29, 1958 (22, 23).

Judgment of conviction was entered on January 12, 1959, and the defendant sentenced to pay a fine of $1,000.00 (23).

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*Figures in parentheses refer to pages in printed transcript of record.

The court entered an order fixing bail pending appeal, and a cash bond was given (24, 25).

A notice of appeal by appellant was filed January 12, 1959 (26, 27).

BASIS OF JURISDICTION

The District Court had jurisdiction by virtue of the nature of the case inasmuch as the offenses charged in the Indictment were against the laws of the United States (Title 18, U.S.C.A., Section 3231, 62 Stat. 826).

This Honorable Court of Appeals has jurisdiction because this is an appeal from a final decision of a District Court of the United States, and such an appeal is expressly authorized by the provisions of Title 28, U.S.C., Section 1291, 62 Stat. 929.

STATEMENT OF THE CASE

The Indictment.

Count V of the Indictment, on which appellant was convicted, charges in effect that on or about the 9th day of December, 1955, appellant, well knowing Short to be an employee of the Pinal County Agricultural Stabilization and Conservation Committee, an agency of the United States, and in such capacity charged with the duty of the proper administration of the cotton acreage allotment and marketing quota program of the United States, as the defendant well knew, did willfully and unlawfully tender to the said Joe L. Short a check in the amount of $1,750.00, dated December 9, 1955, drawn on the Valley National Bank, Mesa, Arizona, signed by the appellant as drawer, and payable to the order of Short, with the intent to influence the said Short to act in his aforesaid official capacity in committing and allowing the commission of a fraud against the United States, to-wit: the procuring of a cotton

acreage allotment in excess of that to which the appellant was lawfully entitled under the cotton acreage allotment and marketing quota program of the United States (6).

In appellant's statement of points on which he intends to rely (509), it is claimed that Count V fails to state an offense against the United States. After a careful study of *Schneider v. United States,* 9 Cir., 192 Fed. (2d) 498, 500, appellant now waives that point.

The Facts.

Appellant met Short for the first time in 1954, when restrictions were again placed on cotton acreage (266, 373). Appellant was looking for additional acreage and was told to contact Short at the A.S.C. office in Casa Grande, Arizona, for further information with reference to a certain Burns farm (267). Appellant saw Short some time prior to March 20, 1954, and on that date gave him a check for $1,620.00 upon the statement by Short that Burns had released the acreage for him to take care of because of insufficient water on the Burns farm (268). Appellant stopped payment on this check (defendant's Exhibit M in evidence) because appellant had understood that it was necessary to get a lease from the farmer and had been so advised by the manager of the Valley National Bank at Mesa (269, 270). Appellant saw Short again and stated that he would have to have a lease on the Burns farm as he understood that was the only way a cotton allotment could be transferred (270, 271). Short advised appellant that he would contact Burns and get a lease from him. Early in April, appellant received from Short a lease purportedly signed by Burns (Government's Exhibit 15 in evidence). The Burns signature on the lease was witnessed by Lena H. Andrews, at Short's suggestion (379, 427), and Short witnessed appellant's signature (272, 379). When the lease was received, appellant gave

Short another check (Government's Exhibit 14-A in evidence) in lieu of the one on which payment was stopped, for $1,620.00, dated April 5, 1954, and payable to the order of Short (272). Appellant had no idea at the time that he got the Burns lease that it was not a bona fide lease. Appellant then received a cotton allotment with the additional Burns acreage added to the regular allotment (273).

The foregoing refers to the bribery charge in Count I in the Indictment covering the 1954 crop year. This is the genesis of Neely's dealings with Short. Count III charges bribery and covers the 1955 crop year. On Counts I and III, as before stated, appellant was acquitted. Count V covers the 1956 crop year. It is this count on which appellant was convicted.

We are, of course, only concerned in this appeal with Count V; although to understand the appellant's contentions here, it may be necessary that the testimony on Counts I and III covering the alleged bribery in connection with the 1954 and 1955 crop years be considered.

With reference to Count III, covering the 1955 crop year, Neely contacted Short at the ASC office and inquired if the Burns farm lease was going to be available for the 1955 crop year (277). Short advised Neely that it was available but for a lesser acreage, and said that the acreage would be 70.5 acres or 70.6 acres at $20.00 an acre (278). On the 22nd day of November, 1954, after the discussion with reference to the 1955 allotment, Neely gave Short his check for $1,410.00 (Government's Exhibit 14-B in evidence).

The Facts on Count V Upon Which Appellant Was Convicted.

It may be noted here that Short, on January 14, 1957, some nine months prior to the filing of the Indictment, made a signed statement witnessed by his attorney and by two

Special Agents of the United States Department of Agriculture. This statement was admitted in evidence as defendant's Exhibit "J" and is appended to this brief as Appendix 1.

On January 22, 1957, Neely gave a statement signed by him and witnessed by Doyle S. Kennedy and Lloyd N. Johnson, Special Agents of the United States Department of Agriculture. This statement was written up on January 22, 1957, by Special Agent Lloyd N. Johnson in his own handwriting and is said to be the gist of a conversation had with Neely (222). This statement was also admitted in evidence, as Government's Exhibit 25 and is appended to this brief as Appendix 2.

Later, on March 24, 1957, Special Agent Lloyd N. Johnson presented a typewritten statement to Mr. Neely. This statement was made from a lengthy tape recording (225, 226) which took five hours to play back, and purports to be a summary of same. Neely did not sign the statement, although he did make a few changes in same, as shown by the original Exhibit 24 in evidence. Johnson also prepared this statement for Mr. Neely to sign and stated that it was a summarization of the substance of his (Johnson's) conversations with Mr. Neely (241, 243). While the statement is dated March 24, 1957, the tape recording was taken some time before that (243), and the statement was written up by Agent Johnson subsequent to March 24 (244). This statement was likewise admitted in evidence as Government's Exhibit 24 and is appended to this brief as Appendix 3.

In the argument, *infra,* the contents of these statements will be discussed, together with pertinent evidence relating to Count V.

In December, 1955, Neely contacted Short at the ASC office and asked him about the availability of the allotment off the Burns farm for 1956. Short indicated that he would

have to see Mr. Burns and that Neely should contact Short later, which he did (290, 291).

At that time, he had nothing in his mind that would cause him to believe that it was not a bona fide transaction (291). The last allotment or lease was for 60 acres and at a price of $25.00 per acre would have amounted to $1,500.00. The check given Short on December 9, 1955 (Government's Exhibit 14-C), for 60 acres of cotton at $25.00 per acre was, in fact, $250.00 more than the $1,500.00 computed for 60 acres at $25.00 per acre. Neely's explanation of this is that he went to the office like on other occasions and asked Short about the Burns allotment lease and was advised that it would be $25.00 per acre, and that he thought the cotton was worth more than he had been paying originally (304), to wit: $20.00 per acre. He stated he knew at the time, through other employees in the office, that Short was going to have some hospital expenses for his wife, but that the primary reason was that the cotton base was worth more than the $20.00 per acre that he had been paying (305).

Short testified that Neeely asked him if he could get the Burns farm on this lease for the next year and that Short told Neely that he could but that the price was going up to $25.00 per acre and that Neely gave him a check with the statement, "Well, that would be about $1,500.00, after figuring out, or something like that, and he said, 'I understand that your wife is going to the hospital before long. I am making this $1,750.00. The other $250.00 is not to go to Burns. It is for you.'" Short then thanked Neely. This took place on December 9, 1955, the date of the check (403).

The testimony of Short with reference to this particular transaction coincides with Short's statement made on or about January 14, 1957, to Special Agents Cardon and Kennedy, as shown in Appendix 1 to this brief, and also

coincides with the statement given by Neely to Special Agent Johnson as shown in Appendix 3 to this brief.

QUESTION INVOLVED

The only question involved is: Was Count V sustained by evidence sufficient for the jury to say, beyond a reasonable doubt, that the defendant was guilty of wilfully and unlawfully and with corrupt intent tendering a bribe to Joe L. Short with intent to influence Short to act in his official capacity in committing and allowing the commision of a fraud against the United States?

Appellant is contending that there is no evidence, direct or circumstantial, showing intent, which is an essential element under Title 18, U.S.C.A., Section 201.

This question is raised in two specifications of error which will be argued together.

SPECIFICATIONS OF ERROR

I.

The lower court erred in denying appellant's motion for judgment of acquittal at the end of the Government's case and at the end of the entire case, as to Count V, because the evidence was insufficient to submit to the jury the question as to whether, beyond a reasonable doubt, there was any corrupt intent on the part of appellant to wilfully and unlawfully tender a bribe to Joe L. Short with intent to influence him to act in his official capacity in committing and allowing the commission of a fraud against the United States.

II.

The lower court erred and abused its discretion in denying appellant's motion for a new trial, based upon the grounds

that a judgment of acquittal should have been given at the close of all of the evidence, and upon the further ground that the verdict is not supported by substantial evidence, for the reason that there was no proof of corrupt intent on the part of appellant and that he did not, as charged in Count V, wilfully and unlawfully tender Joe L. Short the check for $1,750.00 dated December 9, 1955, with intent to influence Short to act in his official capacity in committing and allowing the commission of a fraud against the United States, to-wit: the procuring of a cotton allotment for the defendant in excess of that to which the defendant was lawfully entitled under the cotton acreage allotment and marketing quota program of the United States.

ARGUMENT

The Verdict on Count V Is Unsupported by the Evidence.

I.

The lower court erred in denying appellant's motion for judgment of acquittal at the end of the Government's case and at the end of the entire case, as to Count V, because the evidence was insufficient to submit to the jury the question as to whether, beyond a reasonable doubt, there was any corrupt intent on the part of appellant to wilfully and unlawfully tender a bribe to Joe L. Short with intent to influence him to act in his official capacity in committing and allowing the commission of a fraud against the United States.

II.

The lower court erred and abused its discretion in denying appellant's motion for a new trial, based upon the grounds that a judgment of acquittal should have been given at the close of all of the evidence, and upon the further ground that the verdict is not sup-

ported by substantial evidence, for the reason that there was no proof of corrupt intent on the part of appellant and that he did not, as charged in Count V, wilfully and unlawfully tender Joe L. Short the check for $1,750.00 dated December 9, 1955, with intent to influence Short to act in his official capacity in committing and allowing the commission of a fraud against the United States, to-wit: the procuring of a cotton allotment for the defendant in excess of that to which the defendant was lawfully entitled under the cotton acreage allotment and marketing quota program of the United States.

Appellant moved for judgment of acquittal on all counts with which he was charged in the Indictment, at the close of the Government's case (18, 262) and at the close of all of the evidence (18, 19, 482), and moved for a new trial (21). The motions were denied.

This is the only point on which appellant intends to rely, and the following covers both specifications of error.

In order that this Honorable Court will not confuse overplanting and failure to plow up an overplant as being crimes, suffice it to say that neither act is a crime. The court below so instructed the jury (500). The court below likewise instructed the jury that it was not against the law for appellant to lease land with a cotton allotment or to secure an additional cotton allotment (500).

Under the law (7 U.S.C.A. 1374, as amended August 28, 1954), it is provided, in subdivision (c) of that section, as follows:

> "If the acreage determined to be planted to any basic agricultural commodity on the farm is in excess of the farm acreage allotment, the Secretary shall by appropriate regulations provide for a reasonable time *prior to harvest within which such planted acreage may be adjusted to the farm acreage allotment.*" (Emphasis ours.)

The regulations contained in paragraph 78, 1956 Cotton Handbook No. 5, pertaining to the 1956 cotton crop, provide:

> "*Mailing and filing* (MQ-93). The notices on MQ-93 prepared as outlined in paragraph 74A shall be mailed from the county office as soon as practicable after measurements from the farms are completed *and time has been allowed to adjust excess acreage to the farm allotment* * * *. The notices under paragraphs 75B and 75D shall be prepared and mailed as soon as practicable under the limitations set forth in such paragraphs. Every effort should be made to complete the mailing of notices under paragraphs 74A and 74B *prior to the beginning of harvest* * * *."

Appellant never received notice of overplant before harvest nor at the time of the trial had he received any notice of penalty for overplanting (88, 111, 291).

Witnesses Mathis and Wolfe measured appellant's farm on Friday, December 28, 1956, after the harvesting (picking of the cotton) was practically completed (Appendix 3).

Under the law and regulations, *supra,* even a penalty for overplanting cannot be assessed unless, prior to the beginning of harvest, the farm operator is notified of the overplant so that he may adjust his excess acreage to the farm acreage allotment.

The only case that we have found construing the regulations and 7 U.S.C.A. 1374, subdivision (c), *supra,* is *United States v. Lynn,* from the District Court of the Eastern District of Kentucky, reported in 132 Fed. Sup. 605. This case had to do with a tobacco crop allotment and the court denied the United States the right to collect a penalty because the farmer had been denied the opportunity to protect himself from the penalty by means provided by the statute and regulations.

It will be noted that all of the payments by appellant set forth in Counts I, III, and V of the Indictment were by check. No other money was paid to Short except a $10 measurement fee covering the 1955 crop (397). Appellant's entire case is based on the fact that he at no time knew what Short was doing and that at no time did he know that he was not getting an additional cotton allotment by virtue of the so-called Burns lease, which lease, by the way, was forged by Short under his own admissions (426). As stated before, appellant was acquitted on the bribery charges set forth in Count I (1954 crop year) and Count III (1955 crop year).

The only difference between Counts I and III and Count V is the fact that appellant made a gift to Short of an additional $250, at which time he stated that the $250 was not to go to Burns (403). In short, unless this gift of $250 was shown by the Government to be something other than what it actually was under the testimony, there was no intent on the part of appellant to bribe Short (see 8 *Am. Jur.*, par. 6, page 888).

The statute under which appellant was indicted as to Counts I, III, and V, provides:

> "Whoever * * * tenders any check, * * * to any officer or employee or person acting for or on behalf of the United States * * * in any official function, * * * with intent to influence his decision or action on any question, matter, cause or proceeding which may by law be brought before him in his official capacity, * * * with intent to influence him or to commit or aid in committing, or to collude in, or allow any fraud or make opportunity for the commission of any fraud on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be fined not more than three times the amount of such money or value of such thing or imprisonment not more than three years or both."

The Indictment charges, in Count V, that the appellant wilfully and unlawfully tendered the $1,750.00 to Short with intent to influence Short in his official capacity. It is conceded that there is no direct evidence of intent on the part of appellant, nor is there any evidence of evil motive or bad purpose on the part of appellant to disobey or disregard the law. Intent cannot be presumed (*Tot v. United States,* 319 U.S. 463, 63 Sup. Ct. 1241), and there was no evidence of a circumstantial nature upon which the jury could say beyond a reasonable doubt that the payment by appellant of the $1,750.00 to Short was for the purpose of corrupting Short and influencing his official action. In other words, it is our contention that the evidence definitely shows that appellant tendered the amounts of money set forth in Counts I, III, and V of the Indictment honestly and in good faith, believing that he was leasing the Burns farm and thereby securing a bona fide cotton allotment.

If this were a case where Short did the things he did for the purpose of entrapping Neely, we would have a perfect case of entrapment.

Sherman v. United States, 356 U.S. 369, 78 Sup. Ct. 819;

Robinson v. United States, (8 Cir.) 32 Fed. (2d) 505, 66 A.L.R. 468;

United States v. Klosterman, 248 Fed. (2d) 191, 194.

Before discussing the evidence or lack of it to show intent, we call attention of this Honorable Court to *Morissette v. United States,* 342 U.S. 246, 72 Sup. Ct. 240, in which it was held that, under a statute where one of the elements of the offense, is intent, that element cannot be presumed from the act but must be established not only from the act but also from defendant's testimony and all of the surrounding

circumstances. The statute under which appellant was convicted is not *malum prohibitum* but *malum in se.*

26 *Words and Phrases,* pages 343 to 348.

See also *United States v. Nedley,* et al, 3 Cir., 255 Fed. (2d) 350, 357.

> "If a specific intent is an element of the crime charged, the doing of the act does not establish the existence of the intent, and the prosecution must present independent evidence of the intent." *Wharton's Criminal Evidence,* 12th ed., Vol. 1, page 244.

Likewise, and with reference to the $250.00, which will be discussed later, the acceptance of a gift without corrupt prior understanding is not bribery.

Wharton's Criminal Law and Procedure, Vol. 3, pages 774, 775;

People v. Coffey, 161 Cal. 433, 119 Pac. 901;

22 Corpus Juris Secundum, paragraph 32, page 91;

8 Am. Jur., par. 6, page 888.

We are not contending that intent cannot be proved by circumstantial evidence, but we do contend that there is no evidence, either direct or circumstantial, to show intent on the part of appellant to corruptly influence Short. Suspicion alone is insufficient to prove intent because criminal intent is an essential element of the crime of bribery. *United States v. Labovitz, et al,* (3 Cir.) 251 Fed. (2d) 393.

In connection with form 578, Government's Exhibit 11-D in evidence, covering the Neely farm, this form did not show the acreage at the time it was signed by Neely nor did it show any destroyed cotton (291).

It will be noted that defendant's Exhibit E, the marketing card for 1956 for short staple cotton, was issued by Pauline Golsten, an employee of the office, who signed H. L. Mathis' name to same by herself (86, 87, 88).

As before stated, the statement of Joe L. Short, the government employee in question, and the two statements of appellant, were introduced in evidence, Short's statement being defendant's Exhibit "J" in evidence; Neely's statement of January 22, 1957, being Government's Exhibit 25 in evidence; and Neely's statement of March 24, 1957, being Government's Exhibit 24 in evidence. These statements are attached to this brief as Appendices 1, 2, and 3, for the convenience of the court. These statements, taken from seven to nine months prior to the Indictment, when considered in connection with the oral evidence at the trial, in our minds show that appellant at no time intended to violate the bribery statute. In fact, defendant never had any suspicion that anything was out of kilter until December, 1956.

In Short's statement of January 14, 1957 (Appendix 1), he stated:

> "During each of the three crop seasons mentioned above, I accepted money from cotton producers in exchange for obtaining additional cotton allotments for them. I led these producers to believe that I obtained such allotments either from my own farm or through a deal with other producers who had allotments which were unplanted. They trusted me and, as far as I know, they believed my representations.
>
> "The names of the producers and the amounts they paid are as follows: Rex Neely paid me $1,800.00, $1,600.00, and $1,750.00 for the 1954, 1955 and 1956 crop seasons respectively; Joe Ladd paid me $3,900.00, and L. Welton Simmons paid me $2,800.00, both for the 1956 crop season.
>
> "As I now recall, Neely paid at the rate of $25.00 per acre for the extra allotment I obtained for him for the 1954 crop, and at the rate of $20.00 per acre for the extra allotment I got him for the 1955 crop, and although I wanted $20.00 per acre for the 1956 extra allotment, which was to be about 60 acres, he gave me

$1,750.00 because he knew I needed it, since my wife was going to have to go to the hospital. * * *

"All of the payments which I received from Neely, Simmons and Ladd were given to me in the form of bank checks, most of which I deposited directly to my account in the Valley National Bank at Casa Grande. In a few instances, I cashed the check and used at least part of the proceeds to pay off loans I owed my bank. I remember that I cashed the $1,800.00 check Neely gave me in December 1953 or January 1954, and kept the cash. I think I finally deposited some of this cash in my account in April 1954. Also, I cashed the check for $900.00 Ladd paid me in April 1956, retained $200.00 in cash, and then deposited the remaining $700.00 to my account. When Simmons paid me $2,800.00 in about January, 1956, I think I redeemed bank loans with part of it and deposited $1,000.00 of it in my account. There may have been other instances of a similar nature, but I do not now recall them. * * *

"With respect to the way I handled the County ASC Office records regarding these extra allotments, I procured the extra acres for Simmons from the County Reserve acreage and showed it on the listing sheet. For Neely, I have him a revised allotment notice, signed by a member of the County Committee, for the right number of acres, but did not enter it on the listing sheet, nor put a copy thereof in Neely's folder. Also, after Agent Kennedy left Casa Grande after being here in November 1956, I instructed H. L. Mathis, my assistant, to prepare a revised notice of allotment for Neely showing 360.7 acres instead of the 306.7 acres originally allotted him. A copy of this revised notice, dated December 1, 1956, was placed in Neely's folder. To obtain the extra acres for Ladd, I reconstituted his farm with a "reserve" farm (1956 serial number 595) which, while receiving cotton allotments for the past four years, actually was not a bona fide farm at all. Thus, by reconstituting it with Ladd's farm, I was able to transfer its allotment to Ladd. * * *

"In further connection with my dealings with Neely, I took occasion to examine nearly all of the cotton allotment files after Agent Kennedy had left Casa Grande in November 1956, and I noted that Neely's form 578 showed he was overplanted and that no cotton had been destroyed. I intended to visit his farm and find out about the matter, but before I could go out there, he came into my office on December 19, 1956. I asked him if he had plowed up his excess cotton and he said he had not. I asked him then why he had gotten his marketing card, and he said the office had given it to him. I told him that he had better measure the cotton then, and pay the penalty. To the best of my recollection, I believe that just after the measurements of the growing cotton had been made—possibly the latter part of July 1956—I saw from his old 578 that Neely was overplanted and I talked to him at that time and told him that he was more than 100 acres overplanted, and that he should plow it up. I do not now remember whether I then returned the form 578 to his folder, or retained it in my desk for a period of time before putting it back in the file. Also, I am unable to explain the entry of the figure '306.7' in Mathis' handwriting in the measured acreage column of the Control Register; while it is possible that after talking to Neely in July, 1956, I may have told Mathis that Neely would plow up the excess cotton, I am sure that I never told Mathis that it had been plowed up, because I didn't know whether or not it had. * * *"

In appellant's statement of January 22, 1957, (Appendix 2), he stated in effect that one Mike Watson, since deceased, told him that he thought Bill Burns had some additional acreage for cotton allotment available and that Short's name was mentioned in this connection; that he talked with Short and that Short thought something could be worked out. Appellant was somewhat hesitant at the time and asked Short if it was all right. Appellant was assured that it was and

that there was nothing wrong in obtaining this allotment. Appellant then stated:

> "* * * I knew I was overplanted in 1956, but I didn't know how much. I never received a notice that I was overplanted. I went to the County ASC Office at Casa Grande in June or July 1956 to find out how much I was overplanted, but Short was not there and the other employees were unable to tell me because the form containing this information (CSS-578) was missing from my file. I intended all along to destroy a sufficient quantity of the poorer cotton to come within my allotment, but I did not do so because I could never find out how much it was necessary to destroy.
>
> "I do not recall having discussed with Short or having been told by him in the summer of 1956 that I was overplanted. The first time this matter was mentioned to me by Short was on or about Dec. 19, 1956, when he told me he knew I was overplanted; I believe he said about 60 acres.
>
> "I have examined with Agent Kennedy the information listed on Form CSS-578 as to the number of acres planted in 1956 to cotton in the fields indicated thereon and I confirm this information to the best of my recollection. I wish to state, however, that I do not recall having seen or noticed the figures representing the final measurements of my cotton planting at the time I signed this form on October 3, 1956, and received my marketing card.
>
> "With respect to the Burns farm, I do not know its exact location, except that it is in the Coolidge Area, nor do I have any information with respect to its cotton allotments in 1954, 1955 and 1956.
>
> "Although I was aware that before allotments from leased land could be planted on other land, a reconstitution was necessary, I was told by Short that he would combine the farms and take care of the necessary paper work.* * *"

In appellant's unsigned statement of March 24, 1957, prepared by Special Agent Johnson, and being purportedly a summary of a rather lengthy tape recording, appellant stated:

> "In the fall of 1953, knowing that cotton acreage allotments would be in effect for the 1954 season, like many other farmers I was looking around for some extra cotton acreage. It was my understanding that under the program coming into effect, a farmer could obtain additional cotton acreage through procedures set out in the program provisions. In this connection, an acquaintance, Mike Watson, now deceased, suggested that I contact Joe Short at the ASC office in Casa Grande.
>
> "I thereafter talked to Short, with whom I had not previously been well acquainted, but whom I had seen in the office, and he said that he believed something could be worked out. Later, he told me that he could get about 80 acres for me from a farm in the Coolidge area where there was a shortage of irrigation water and cotton allotments on some of the farms there were being released for planting elsewhere in order not to lose their cotton history. It was my understanding that a lease of the land was required in connection with the transfer of allotments, and I told Short that if he could get a lease for the farm having about 80 acres of cotton allotment, I would take it. Short set the price at $20 per acre for the allotment and said he could get 81 acres for me. I gave him a check to cover the 81 acres, although, as will be set out later, I am not sure it was the above-mentioned check dated April 5, 1954. At the time I gave Short the check, he presented the above-mentioned lease which I signed in his presence, and which already had the name 'W. R. Burns' affixed thereto as lessor.
>
> "In connection with this transaction with Short, he gave me to understand that he was handling the lease of the farm for Burns. I do not recall exactly what was said about this. However, I do remember that I

stopped payment on the check immediately after I had given it to Short and had the lease in my possession because I was somewhat suspicious in the matter and wanted to do some checking. I talked with a number of farmers and other individuals, whose names I do not now recall, about Short and about whether I had followed the proper procedure in obtaining the additional acreage. Also, I went to my bank, the Valley National Bank, Mesa, to explain why I had stopped payment on the check and there I talked to W. J. Asher, Manager, and as I recall, when I told him I had a lease he said that it should be all right. I also talked to Short again about the legal aspects, that is, the program provisions, and as to whether under the terms of the lease I would have to farm the Burns tract. He indicated I would not have to do anything on the Burns farm and upon receiving assurance from him that everything was regular, I let the check go through, or issued another one to him, I am not sure which.* * *

"In the fall of 1955, about the time the 1956 allotment notices were being sent out, I spoke to Short about the availability of the Burns acreage for 1956. Short indicated that there would be 60 acres available and I gave him the above-listed check for $1,750, dated December 9, 1955 at the ASC office. I did not request a lease in connection with this transaction, and I do not recall that the matter of a lease was even mentioned. To the best of my recollection at this time, the rate asked by Short for 1956 was $25 per acre, and I added $250 to the check to assist Short with hospital expenses, as I had heard that his wife was going to have an operation. I was willing to pay the higher price per acre because I felt that the allotment was worth more in 1956 than I had been paying.

"I have been shown a Form 578, Report of 1956 Acreage, for my Pinal County farm on which are entered the measured acres of short staple cotton in the various fields, with a total of 477.7 final measured acres being indicated. There are no figures represent-

ing destroyed cotton on this form. It bears my signature opposite the date October 3, 1956. I have no reason to question the accuracy of the total measured acres shown on this form for 1956. * * *

"I did not see Short until about the middle of December 1956, which I now understand was December 19. I was not called into the office by anyone on that date, but had gone there to ask about the soil bank and my 1956 ACP payment. Short was there at that time and he reminded me that I was overplanted and asked me if I had plowed up any cotton. He said that there was an investigation going on and that I had better request a measurement and pay the penalty on the excess cotton. However, I did not plow up any cotton after talking to Short on the 19th because I had already started the second picking by that time and it was then too late.

"On a later date which I believe was December 28, 1956, Mathis and Ray Wolf came out where we were picking cotton and said that they were going to measure my farm. I asked them why they were going to measure and they indicated that it was being done because of my being overplanted and failure to destroy any cotton. I recall that I asked them if they had seen Short, as I wanted to know whether or not they knew about the 60 acres of extra allotment I had obtained from him. I do not believe that the matter of a lease was mentioned at that time. A few days later, I believe it was on the following Sunday, I went to Casa Grande to see Mathis and find out what the results of the measurements were. I mentioned to Mathis and Wolf, who also was there, that I had a lease for 60 additional acres of allotment. Mathis only said that they would like to see it. They said that their measurements were close to those shown on the Form 578, but they did not say what I should do about the overplanting. After that I believed it was too late to do anything, as the cotton was practically all picked and marketed.

"To the best of my recollection, the next time I saw Short was at his home on the day he resigned (Decem-

ber 28, 1956). I had heard that he had been to Phoenix and I wanted to find out what the situation was regarding the investigation and what I should do about my overplanting and paying penalty. Short at that time said he had resigned from his ASC office position on that same day. He indicated that he did not know what was going to happen. He did not say anything about me getting a measurement nor anything about me being in any kind of trouble. * * *

"* * * In my dealings with Short from the beginning I had not thought of these implications until the meeting with him at Chandler when he mentioned bribery. I did not know that Short was not acting in good faith in these matters. I never thought of myself as being in a position at any time to bring pressure upon him to make it possible, through his connection with a Government office, for me to overplant and not have to destroy excess cotton or to take other advantages. * * * "

From the oral evidence at the trial, and from the statements, it seems to us that the Government has failed to prove that appellant "did wilfully and unlawfully tender to said Joe L. Short a check * * * with intent to influence the said Joe L. Short to act in his aforesaid official capacity in committing and allowing the commission of a fraud against the United States * * *" (6).

The motion for a new trial should have been granted on the grounds set forth, to-wit: a denial of appellant's motion for acquittal made at the conclusion of all of the evidence and the fact that the verdict was not supported by substantial evidence (21).

The checks tendered Short were not given him in his official capacity but merely for the purpose of getting an additional cotton allotment under the so-called Burns lease. There is no evidence in the record sufficient to prove beyond

a reasonable doubt or at all that appellant wilfully and with corrupt intent influenced Short in his official capacity. In fact, the evidence is to the contrary. The crime of tendering a bribe cannot be committed in the absence of knowledge on the part of the appellant or in the absence of a corrupt intent. As stated in *Ingram v. United States,* ..... U.S. ....., 79 Sup. Ct. 1314, at page 1320 (decided June 29, 1959), quoting from *Direct Sales Co. v. United States,* 319 U.S. 711, 63 Sup. Ct. 1269:

> " 'Without the knowledge, the intent cannot exist * * *. Furthermore, to establish the intent, the evidence of knowledge must be clear, not equivocal * * *. This, because charges of conspiracy are not to be made out by piling inference upon inference, thus fashioning * * * a dragnet to draw in all substantive crimes.' "

In the *Ingram* case, *supra,* it was held that even a conspiracy to commit a particular substantive offense cannot exist without at least the degree of criminal intent necessary for the substantive offense itself. In that case, the court held that the motions for acquittal of two of the named defendants should have been granted by the District Court and that the Court of Appeals was in error in affirming their convictions.

It will be noted that appellant was acquitted of the conspiracy count, which embraces not only the 1955 payment to Short for the 1956 cropping year but also the other payments, as well as other matters unnecessary to discuss here.

CONCLUSION

We respectfully submit that no corrupt intent is shown by the evidence; that this court should reverse this case and itself grant a judgment of acquittal or, in the alternative, grant a new trial as to Count V.

Respectfully submitted,

Louis B. Whitney
Loretta Whitney
Paul W. LaPrade
810 Luhrs Tower
Phoenix, Arizona

Attorneys for Appellant

(Appendices Follow)

Appendix 1

Eloy, Arizona
January 14, 1957

I, Joe L. Short, residing near Casa Grande, Arizona, make the following statement to Reed S. Cardon and Doyle S. Kennedy who have identified themselves to me as Special Agents of the United States Department of Agriculture, Commodity Stabilization Service, Compliance and Investigation Division, knowing that it may be used in evidence. This statement is being made in the presence of, and with the consent of, my attorney, W. A. Stanfield of Eloy, Arizona, and is given freely, and voluntarily on my part, without any threats or promises of reward or immunity from prosecution.

During the crop seasons of the years of 1954, 1955, and 1956, I was manager of the Pinal County ASC office in Casa Grande, Arizona. I resigned from this position on December 28, 1956. In September 1956, I suffered a cerebral stroke which caused me to be away from the office most of the time up to the date of my resignation. In setting out the details below I shall be as accurate as I can.

During each of the three crop seasons mentioned above, I accepted money from cotton producers in exchange for obtaining additional cotton allotments for them. I led these producers to believe that I obtained such allotments either from my own farm or through a deal with other producers who had allotments which were unplanted. They trusted me and, as far as I know, they believed my representations.

The names of the producers and the amounts they paid are as follows: Rex Neely paid me $1,800.00, $1,600.00, and $1,750.00 for the 1954, 1955 and 1956 crop seasons respectively; Joe Ladd paid me $3,900.00, and L. Welton Simmons paid me $2,800.00, both for the 1956 crop season.

As I now recall, Neely paid at the rate of $25.00 per acre for the extra allotment I obtained for him for the 1954 crop, and at the rate of $20.00 per acre for the extra allotment I got him for the 1955 crop, and although I wanted $20.00 per acre for the 1956 extra allotment, which was to be about 60 acres, he gave me $1,750.00 because he knew I needed it, since my wife was going to have to go to the hospital.

With respect to the payment from Simmons, I believe I charged him at the rate of $50.00 or $55.00 per acre for the extra allotment of the 1956 crop acreage.

My deal with Joe Ladd was different. He came to me and said if I could get an extra allotment—say 60 acres—he could get the land from a landlord who would want one-fifth of the profits for the rental of the land, and that he (Ladd) then would raise the crop and split the remaining profits with me. In other words, the profits would be divided this way: one-fifth to the landlord, two-fifths to Ladd, and two-fifths to me. I got the allotment for Ladd, and up to this time he has paid me a total of $3,900.00 as follows: $900.00 in April 1956, $500.00 in September 1956, after my cerebral stroke and $2,500.00 in the latter part of 1956. I don't know if there is any more due me under our agreement, since I have not examined Ladd's books.

All of the payments which I received from Neely, Simmons and Ladd were given to me in the form of bank checks, most of which I deposited directly to my account in the Valley National Bank at Casa Grande. In a few instances, I cashed the check and used at least part of the proceeds to pay off loans I owed my bank. I remember that I cashed the $1,800.00 check Neely gave me in December 1953 or January 1954, and kept the cash. I think I finally deposited some of this cash in my account in April 1954. Also, I cashed the

check for $900.00 Ladd paid me in April 1956, retained $200.00 in cash, and then deposited the remaining $700.00 to my account. When Simmons paid me $2,800.00 in about January 1956, I think I redeemed bank loans with part of it and deposited $1,000.00 of it in my account. There may have been other instances of a similar nature, but I do not now recall them.

At this point, I would like to state that during the time I was manager of the Pinal County ASC Office, the three men named above, Neely, Simmons and Ladd, are the only persons who paid me in any manner to secure additional cotton allotments for them. Also I would like to state that it is common practice in Pinal County, in arriving at the value of a farm for cash lease purposes, to consider each acre of the farm's cotton allotment to be worth approximately one hundred dollars. In the outright purchase of farm land, the cotton allotment is valued at about one thousand dollars per acre.

With respect to the way I handled the County ASC Office records regarding these extra allotments, I procured the extra acres for Simmons from the County Reserve acreage and showed it on the listing sheet. For Neely, I have him a revised allotment notice, signed by a member of the County Committee, for the right number of acres, but did not enter it on the listing sheet, nor put a copy thereof in Neely's folder. Also, after Agent Kennedy left Casa Grande after being here in November 1956, I instructed H. L. Mathis, my assistant, to prepare a revised notice of allotment for Neely showing 360.7 acres instead of the 306.7 acres originally allotted him. A copy of this revised notice, dated December 1, 1956, was placed in Neely's folder. To obtain the extra acres for Ladd, I reconstituted his farm with a "reserve" farm (1956 serial number 595) which, while receiving cotton

allotments for the past four years, actually was not a bona fide farm at all. Thus, by reconstituting it with Ladd's farm, I was able to transfer its allotment to Ladd.

Both H. L. Mathis and Ray Wolf, who is a member of the Arizona State ASC Office staff, as well as Paul B. Hanna Jr. and V. E. Morris, Jr., have known about the "reserve" or dummy farm (#595) for at least the last year and a half. I had discussed this farm with them and had told them not to do anything about it, saying that anything to be done about it would be done by me.

With respect to the notice of allotment forms (MQ-24), I maintained a supply of them signed in blank by a member of the County ASC Committee—sometimes I kept the supply and sometimes I turned them over to H. L. Mathis. These forms were signed in blank by either J. E. Beggs, Henry Haley or Rodney Elsberry, who comprised the committee. The having of such signed forms expedited the work in the office, since when a farm was combined or the allotment revised, the farmer would need the signed notice of such allotment in order to make his financing arrangements, and if there was no committee member available for signing it, I would use one that had been signed in blank.

In further connection with my dealings with Neely, I took occasion to examine nearly all of the cotton allotment files after Agent Kennedy had left Casa Grande in November 1956, and I noted that Neely's form 578 showed he was overplanted and that no cotton had been destroyed. I intended to visit his farm and find out about the matter, but before I could go out there, he came into my office on December 19, 1956. I asked him if he had plowed up his excess cotton and he said he had not. I asked him then why he had gotten his marketing card, and he said the office had given it to him. I told him that he had better measure the

cotton then, and pay the penalty. To the best of my recollection, I believe that just after the measurements of the growing cotton had been made—possibly the latter part of July 1956—I saw from his form 578 that Neely was overplanted and I talked to him at that time and told him that he was more than 100 acres overplanted, and that he should plow it up. I do not now remember whether I then returned the form 578 to his folder, or retained it in my desk for a period of time before putting it back in the file. Also, I am unable to explain the entry of the figure "306.7" in Mathis' handwriting in the measured acreage column of the Control Register; while it is possible that after talking to Neely in July 1956, I may have told Mathis that Neely would plow up the excess cotton, I am sure that I never told Mathis that it had been plowed up, because I didn't know whether or not it had.

With respect to the County ASC Office records for the 1956 crop year for the two farms operated by John E. Beggs, Chairman of the Pinal County ASC Committee, this is what happened. After the survey crew had measured these farms, Beggs, who had been spending the summer in the northern part of Arizona, came to me around the first part of July 1956, and asked if the measurements showed that he had too many acres planted. I got the forms 578 for his two places and told him he was overplanted on both farms on both short staple and long staple. I asked him where he was going to plow up the cotton and he designated the fields and the acreages in each he intended to destroy, and I entered these figures on the forms 578 which then brought the totals into compliance with the allotments, and retained these forms in my desk drawer. I told Beggs that he then would have to go out to his farms and leave instructions with his employees for the plowing up, and then that

we would measure the destroyed cotton later. I cannot now recall if later I ever asked Beggs if the acreages actually had been destroyed, or if he ever told me they had been. No notices of the overplantings (MQ-94) were sent to Beggs since I knew he came into the office about once every ten days and I could inform him orally. I am unable to explain why the entries in the "measured acreage" column on the Control Register reflect the reduced acres I entered on the forms 578, rather than the actual measurement figures. Also, I am unable to explain why our records show that on August 13, 1956, Beggs was sent forms MQ-93 advising that he was within his allotmented acreages, when actually he had destroyed no cotton, unless it was because that by then I had returned to the files the above forms 578 which incorrectly showed such destruction. I believe I handled Beggs' records for the 1955 crop in the same manner.

With respect to Henry Haley, Vice-Chairman of the 1956 Pinal County ASC Committee, there are two different incidents for me to describe: one having to do with $100.00 he gave me, and the other in connection with his farming operations. In July 1956, I believe, Haley called me one evening at home and said he would like to see me. When he came out, he said he had $100.00 to give me, and I asked why. He said some farmer had told him that if the County ASC Office did something, he was going to give the office manager that amount. Haley declined to tell me the farmer's name or what the service was, but he did indicate the county office already had done it, and then Haley gave me a one hundred dollar bill. I still don't know what the payment was for.

In regard to Haley's farming operations, I had the survey crew measure both of his places during the last of June or the first part of July 1956. Then I believe that in the last

part of July I talked with Haley about the results of the measurements and pointed out to him that he was underplanted some 30 acres on one place (#605) and overplanted on his other place (#1091). He asked me if he could put the 30 acres underplanted into the soil bank, and I told him he could. I asked him what he was going to do about the overplanting on his other place and he said he was going to plow it up. I made out his soil bank work sheet on July 25, 1956, and in connection with its preparation I again reminded him that he was overplanted on his other place and would have to destroy that excess cotton. Also, Haley had asked me what would be the effect of combining his two farms. I had asked Mathis to make out a worksheet and figure out the combination. I don't recall if Mathis ever told me whether the farms should be combined or left alone. With respect to the soil bank payment made to Haley in October 1956, I was in the hospital at that time and Mathis prepared the draft. I do know that I had told both Mathis and Wolf to check and double check for compliance with all allotment acreage requirements before preparing soil bank payments. Also I am sure I did not tell Mathis that Haley had plowed up his excess cotton, because I did not know, myself, whether or not he had.

The Casa Grande Country Club had a farm history until the 1954 crop season, when it was converted into a golf course. However, it has been the custom for the County ASC Committee to continue its cotton allotment and show it on the listing sheet since that time. I understand this allotment has been auctioned off to the highest bidder each year since. The buyer doesn't come to me, but instead Beggs tells me who bought it and I make the necessary entries in the records to transfer the allotment to the purchaser. We call this a "release and reapportionment—unofficial." Beggs,

who is a member of the Casa Grande Country Club, was the Committee member who told me to make the changes each year,—that is, the 1954, 1955 and 1956 crop seasons. I think Beggs may have talked about it to the other two committee members the first year, but after that I don't believe he did. Carl Teeter, Administrative Officer of the Arizona State ASC Committee, knows about it now, because I told him about it last week. I believe his only comment was, "Release and reapportionment,—unofficial". I don't know if he knew about it before last week. I believe the price paid the country club by the purchaser of the 1956 allotment was at the rate of $160.00 per acre.

In connection with the payments I received from the three producers discussed earlier in this statement—Neely, Ladd and Simmons—I have with me some, but not all, of my bank statements for the years 1954, 1955 and 1956, and I will try to identify thereon the deposits of these monies.

In my Valley National Bank statements covering the period January 26, 1954 through April 10, 1954, I believe the deposit of $600.00 on April 7, 1954 represents part of the $1,800.00 paid me that year by Neely. The deposit of $1,750.00 on December 12, 1955, set out in my bank statement covering the period November 25, 1955 through December 23, 1955, represents Neely's payment to me for the 1956 crop year. The statement for the period January 24, 1956 through February 23, 1956 shows a deposit of $1,000.00 on January 31, 1956, and as explained hereinbefore, represents a portion of the $2,800.00 paid me by Simmons for the 1956 crop year. The $700.00 deposit on my statement for March 27, 1956 to April 23, 1956 inclusive, as explained earlier, is part of a $900.00 check paid me by Ladd during the 1956 crop year. Also, Ladd paid me the $500.00 shown deposited on September 11, 1956 in my bank statement covering the

period August 28, 1956 through September 24, 1956. I am unable at this time to identify any other similar deposits on the bank statements I have with me, but the bank will have a complete record and I will attempt, at a later date, to identify others.

The above statement consisting of eight typewritten pages has been read to me and it is true to the best of my knowledge and belief. My attorney, W. A. Stanfield also has read this statement in my presence. I have been given the opportunity to make any additions, changes or deletions that I desired.

JOE L. SHORT
Joe L. Short, Casa Grande, Arizona

Witnesses:

W. A. STANFIELD
W. A. Stanfield, Eloy, Arizona

REED S. CARDON
Reed S. Cardon
DOYLE S. KENNEDY
Doyle S. Kennedy
Special Agents, USDA, CSS, C & I Div.,
1000 Geary Street, Room 101
San Francisco, California

Appendix 2

Chandler, Arizona
January 22, 1957

I, Rex L. Neely, make the following statement freely and voluntarily to Doyle S. Kennedy and Lloyd N. Johnson who have identified themselves to me as Special Agents of the Compliance and Investigation Division, CSS, U. S. Department of Agriculture. This statement is given without threats, or promises of immunity, and I am aware that it may be used in evidence.

In connection with the 1954 cotton crop year I was looking around for additional acreage with cotton allotment. Mike Watson (since deceased) told me he thought Bill Burns had some available. I believe that he mentioned Joe Short's name in this connection. I talked to Short and he said that something could be worked out. I was somewhat hesitant at the time and asked Short if it was all right. He assured me that it was and that there was nothing wrong in obtaining this allotment.

To the best of my recollection, Short said that Burns wanted $20 or $25 per acre for the allotment. I told him that if he could get a lease on that basis I would take it, and he got it for me. I never saw Burns, but his name, as well as Short's name, appears on this lease.

As I now recall, the cotton allotment available on this leased land for 1954 was 80 acres. I made out my personal check to Joe Short in payment. There was only the one lease. Short notified me orally as to the amount of allotment available in 1955 and 1956 and I gave him my personal checks covering 70 acres in 1955 and 60 acres in 1956. Without examining my records, I am unable to state in what amounts the checks were issued or at what rates. I made no payments to Short other than for the acreages

for these three years. I paid a higher rate for the 1956 allotment because I believed it was worth more.

As far as I know, I never received any notices of allotment on these leased acreages.

Taking the lease into consideration, I was not overplanted in 1955 crop year. I knew I was overplanted in 1956, but I didn't know how much. I never received a notice that I was overplanted. I went to the County ASC Office at Casa Grande in June or July 1956 to find out how much I was overplanted, but Short was not there and the other employees were unable to tell me because the form containing this information (CSS-578) was missing from my file. I intended all along to destroy a sufficient quantity of the poorer cotton to come within my allotment, but I did not do so because I could never find out how much it was necessary to destroy.

I do not recall having discussed with Short or having been told by him in the summer of 1956 that I was overplanted. The first time this matter was mentioned to me by Short was on or about Dec. 19, 1956 when he told me he knew I was overplanted; I believe he said about 60 acres.

I have examined with Agent Kennedy the information listed on Form CSS-578 as to the number of acres planted in 1956 to cotton in the fields indicated thereon and I confirm this information to the best of recollection. I wish to state, however, that I do not recall having seen or noticed the figures representing the final measurements of my cotton planting at the time I signed this form on October 3, 1956, and received my marketing card.

With respect to the Burns farm, I do not know its exact location, except that it is in the Coolidge Area, nor do I have any information with respect to its cotton allotments in 1954, 1955 and 1956.

Although I was aware that before allotments from leased land could be planted on other land, a reconstitution was necessary, I was told by Short that he would combine the farms and take care of the necessary paper work.

I have read the foregoing statement consisting of five hand-written pages and it is the truth to the best of my knowledge and belief. I have been given an opportunity to make changes and corrections.

(signed) Rex L. Neely

Witness:

(signed) Doyle S. Kennedy
(signed) Lloyd N. Johnson

Special Agents, Compliance & Investigation
CSS, U. S. Dept. of Agriculture Div.
San Francisco, Calif.

Appendix 3

Chandler, Arizona
March 24, 1957

I, Rex L. Neely, make the following statement freely and voluntarily to Lloyd N. Johnson who has identified himself to me as a Special Agent of the Compliance and Investigation Division, CSS, U. S. Department of Agriculture. The statement is made without threats and without promises of immunity, and I am aware that it may be used in evidence.

I am furnishing this information in connection with the investigation being conducted concerning the cotton acreage allotment and agricultural conservation programs as they pertain to my farming operations, and concerning which I have made available the three cancelled checks which I had issued to Joe L. Short, former manager of the Pinal County ASC Office at Casa Grande, Arizona, to cover extra cotton acreages obtained from Short for the 1954, 1955 and 1956 crop years, together with other records, as follows:

Check No.	Date	Amount
942	4-5-54	$1,620.00
1072-A	11-22-54	1,410.00
1978	12-9-55	1,750.00

A one-year lease, dated March 30, 1954, covering a 160-acre farm, executed in my favor by the lessor, W. R. Burns, for the period to March 1, 1955.

Cotton allotment notices and revisions thereto for my Pinal County farm, as follows:

Short Staple:

Crop Year	Date of Notice	Acres
1954	12-11-53	252.2
1954	2-16-54	319.8
1954	3-19-54	400.8
1955	11-12-54	306.1
		70.6 (in ink)
1956	12- 1-55	306.7
Extra Long Staple:		
1955	3- 3-55	3.8
1956	12- 1-55	1.6

Also, I have been asked to explain the circumstances under which the above payments were made to Short, who was known to me at the time they were made as an official of the U. S. Department of Agriculture in a responsible administrative position, with access to official records having to do with Government programs handled through the Pinal County ASC Office. My explanations are set out hereinafter.

1954 Crop Year.

I am 31 years of age, married, and have lived all of my life in the Chandler-Gilbert area, Maricopa County, Arizona, and prior to 1953 I had farmed on land owned by my father and on land leased by me from others in Maricopa County, raising cotton and other crops. In the spring of 1953, I purchased a section of land in Pinal County, near the town of Maricopa. In the fall of 1953, knowing that cotton acreage allotments would be in effect for the 1954 season, like many other farmers I was looking around for some extra cotton acreage. It was my understanding that under the program coming into effect, a farmer could obtain additional cotton acreage through procedures set out in the program provisions. In this connection, an acquaintance, Mike Watson, now deceased, suggested that I contact Joe Short at the ASC office in Casa Grande.

I thereafter talked to Short, with whom I had not previously been well acquainted, but whom I had seen in the office, and he said that he believed something could be worked out. Later, he told me that he could get about 80 acres for me from a farm in the Coolidge area where there was a shortage of irrigation water and cotton allotments on some of the farms there were being released for planting elsewhere in order not to lose their cotton history. It was my understanding that a lease of the land was required

in connection with the transfer of allotments, and I told Short that if he could get a lease for the farm having about 80 acres of cotton allotment, I would take it. Short set the price at $20 per acre for the allotment and said he could get 81 acres for me. I gave him a check to cover the 81 acres, although, as will be set out later, I am not sure it was the above-mentioned check dated April 5, 1954. At the time I gave Short the check, he presented the above-mentioned lease which I signed in his presence, and which already had the name "W. R. Burns" affixed thereto as lessor.

In connection with this transaction with Short, he gave me to understand that he was handling the leasing of the farm for Burns. I do not recall exactly what was said about this. However, I do remember that I stopped payment on the check immediately after I had given it to Short and had the lease in my possession because I was somewhat suspicious in the matter and wanted to do some checking. I talked with a number of farmers and other individuals, whose names I do not now recall, about Short and about whether I had followed the proper procedure in obtaining additional acreage. Also, I went to my bank, the Valley National Bank, Mesa, to explain why I had stopped payment on the check and there I talked to W. J. Asher, Manager, and as I recall, when I told him I had a lease he said that it should be all right. I also talked to Short again about the legal aspects, that is, the program provisions, and as to whether under the terms of the lease I would have to farm the Burns tract. He indicated I would not have to do anything on the Burns farm and upon receiving assurance from him that everything was regular, I let the check go through, or issued another one to him, I am not sure which.

I have been shown Form 578, Report of 1954 Acreage, on which is entered a total of 388 measured acres of short staple cotton for my farm. The measured acres thus indicated were within my 1954 allotment of 400.8 acres. I received a marketing card for the 1954 crop, marked "eligible".

I ginned my 1954 crop of cotton at the Chandler Gin Company, Chandler, Arizona. This company is a corporation in which I am a stockholder, the stock being owned by a group of farmers in the Chandler area.

1955 Crop Year.

About the time when the 1955 allotment notices were being sent out, I contacted Short at the ASC office and asked him if the Burns cotton acreage was going to be available for the 1955 crop year. He said he believed it would be and that he would find out and let me know, but that he did not think it would be for as many acres as it was in 1954. When I saw him later he told me there were 70.5 acres available and I gave him my check, the one listed above for $1,410.00, dated November 22, 1954. This transaction took place at the ASC office and I believe it was on the date shown on the check.

I did not get a lease for this 1955 acreage and to the best of my recollection a lease was not mentioned. However, I assumed that I would get a lease and fully expected that, even though it was not mentioned at the time I paid Short, he would go ahead and handle it the same way as before with a written lease. However, nothing was later said about it, either by him or by me. In speaking to Short about the extra cotton acreage for 1955, I specifically referred to it as the "Burns" acreage or allotment. He implied at that time that he was still handling the farm for Burns.

With respect to the hand-written figure "70.6" which has been entered directly under the typed allotment figure of 306.1 on my copy of the 1955 notice, I have no knowledge as to who wrote the figure there or when or under what circumstances it was done. The only possible explanation I can think of at this time is that after giving my check to Short for the 1955 extra allotment, I may have had this notice with me when talking to him and he may have placed the figure there to represent the additional allotment I had purchased.

I have examined the Form 578, Report of 1955 Acreage, for my farm on which are entered the measured acres of short staple cotton in the various fields, with the total 426.5 acres. Also entered on this form in red hand-writing is the figure "120.4" under the heading "Destroyed", opposite field No. 2 "S/S Cotton (Stub)", and red figures representing final acres, totaling 306.1 acres, which agrees with my 1955 regular farm short staple allotment. I also recognize my signature on this form opposite the date August 18, 1955.

I recall that Short presented this form for me to sign in the ASC office, and gave me my marketing card. I do not recall having seen or particularly noticed the total measured acres as indicated—426.5. They were no doubt there, but I probably signed in a hurry and did not examine them. I specifically recall not having seen the destroyed and final figures on this form at the time I signed it. The information on this form as to destroyed acres is not correct, as I did not destroy 120.4 acres, and particularly in that one field. Furthermore, the cotton in this field, No. 2, was not stub cotton, as I have never grown cotton from stalks or stubs on my farm. Actually I destroyed no more than a total of 15 acres of cotton that year.

I have questioned the accuracy of the figure representing the total measured acres on this form—426.5, since I thought

I had planted about 380 acres of short staple in 1955. However, Agent Johnson has indicated to me that my farm was measured twice in 1955, once by the regular measuring crew, and again later by the supervisor of the measuring crews, and that the figure is substantially correct.

With respect to destroying cotton on my Pinal County farm in 1955, I knew I was overplanted and would have to plow up some cotton, but I never received an overplant notice from the ASC office. When I went to the office on August 18, 1955, the date of the Form 578, Short told me that I was overplanted and that I would have to destroy some cotton, but I do not recall that he gave me a figure, or told me just how much to destroy. I did know in 1955 that it was necessary to sign the Form 578 before a marketing card would be issued to me. To the best of my recollection, on August 18, 1955, Short got the Form 578 out of the file and I signed it and he gave me my short staple marketing card, and at that time he told me that I had to destroy some cotton. I told him I would and on the same date I went back to my farm and by discing out some poor spots and squaring the ends, I destroyed about 15 acres which I believed was sufficient to bring me within my allotment, including the 70.5 extra acres I had obtained.

I do recall that on the date I got my marketing card from Short, I gave him $10.00 in cash which was the ASC office fee for remeasuring after reporting the destruction of excess cotton. I do not recall having seen Short or anyone else on my farm to check on the destroyed cotton after that date. There was no arrangement between Short and me that I would pay the measuring fee just for the record and then not destroy the cotton.

In 1955 I had a short staple allotment of about 70 acres on my other farm which I operated in Maricopa County,

located near Chandler. I was overplanted on that farm in 1955 and did not obtain a marketing card until in February 1956 when I paid the penalty on the excess. In the meantime during the fall ginning season I marketed all of my cotton grown in both counties on my Pinal County marketing card. I have no reasonable explanation as to why I did not promptly destroy the excess cotton after receiving an overplant notice, or why it took so long for me to get around to paying the penalty. I knew that all of my cotton was being ginned at the same gin, the Chandler Gin Company, and that I had an eligible card from Pinal County, and that all of the cotton from both counties was being marketed on the Pinal County marketing card. I knew this was not in accordance with the regulations.

With respect to Extra Long Staple or Pima cotton, I received a new farm allotment of 3.8 acres in Pinal County for 1955. I have been shown a form 578, Report of 1955 Acreage, for my farm which bears my signature opposite the date August 18, 1955, and shows a total of 5.6 measured acres, with 1.8 acres destroyed, leaving 3.8 final acres, which agrees with my Pima allotment notice.

To the best of my recollection, I planted about 5.6 acres of Pima in 1955. When I signed the Form 578 and obtained my marketing card from Short, I do not believe the figure "1.8" representing destroyed cotton, nor the final figure "3.8", were on the form. I do recall that Short said I was overplanted in Pima, and that he told me to destroy some Pima cotton in 1955. I did not destroy any Pima in 1955.

I had this Pima cotton ginned at the Tempe, Arizona, Community Gin Company and placed it under Government loan myself. In placing it under loan, it did not occur to me that there might be an irregularity, as I did not connect up the overplanting with the loan.

1956 Crop Year

In the fall of 1955, about the time the 1956 allotment notices were being sent out, I spoke to Short about the availability of the Burns acreage for 1956. Short indicated that there would be 60 acres available and I gave him the above-listed check for $1,750.00, dated December 9, 1955 at the ASC office. I did not request a lease in connection with this transaction, and I do not recall that the matter of a lease was even mentioned. To the best of my recollection at this time, the rate asked by Short for 1956 was $25.00 per acre, and I added $250.00 to the check to assist Short with hospital expenses, as I had heard that his wife was going to have an operation. I was willing to pay the higher price per acre because I felt that the allotment was worth more in 1956 than I had been paying.

I have been shown a Form 578, Report of 1956 Acreage, for my Pinal County farm on which are entered the measured acres of short staple cotton in the various fields, with a total of 477.7 final measured acres being indicated. There are no figures representing destroyed cotton on this form. It bears my signature opposite the date October 3, 1956. I have no reason to question the accuracy of the total measured acres shown on this form for 1956.

I knew I was considerably overplanted in 1956. I never received an overplant notice. I went to the ASC office a number of times during the summer to find out just how much I was overplanted, and to inquire about ACP and soil bank. Short was not there on any of these occasions and the office staff was unable to find my farm measurements. When later in October I went in, Mrs. Golston got my papers and I signed the Form 578 and she gave me my marketing card. There was nothing said to me about being overplanted, although the Form 578 showed 477.7 acres

planted and the marketing card showed an allotment of only 306.7 acres.

I did not see Short until about the middle of December, 1956, which I now understand was December 19. I was not called into the office by anyone on that date, but had gone there to ask about the soil bank and my 1956 ACP payment. Short was there at that time and he reminded me that I was overplanted and asked me if I had plowed up any cotton. I told him I had not destroyed any. He said that there was an investigation going on and that I had better request a measurement and pay the penalty on the excess cotton. However, I did not plow up any cotton after talking to Short on the 19th because I had already started the second picking by that time and it was then too late.

On a later date which I believe was December 28, 1956, Mathis and Ray Wolf came out where we were picking cotton and said that they were going to measure my farm. I asked them why they were going to measure and they indicated that it was being done because of my being overplanted and failure to destroy any cotton. I recall that I asked them if they had seen Short, as I wanted to know whether or not they knew about the 60 acres of extra allotment I had obtained from him. I do not believe that the matter of a lease was mentioned at that time. A few days later, I believe it was on the following Sunday, I went to Casa Grande to see Mathis and find out what the results of the measurements were. I mentioned to Mathis and Wolf, who also was there, that I had a lease for 60 additional acres of allotment. Mathis only said that they would like to see it. They said that their measurements were close to those shown on the Form 578, but they did not say what I should do about the overplanting. After that I believed it was too late to do anything, as the cotton was practically all picked and marketed.

To the best of my recollection, the next time I saw Short was at his home on the day he resigned (December 28, 1956). I had heard that he had been to Phoenix and I wanted to find out what the situation was regarding the investigation and what I should do about my overplanting and paying penalty. Short at that time said he had resigned from his ASC office position on that same day. He indicated that he did not know what was going to happen. He did not say anything about me getting a measurement nor anything about me being in any kind of trouble.

I saw Short the next and last time at Chandler. He called me on the telephone during the Christmas Holidays, and I met him at a cafe there and he said something about the investigation which was going on and that they were trying to make him (Short) the goat. I do not know what he meant by that. He asked me if I had a lawyer and he used the word "bribe" or "bribery" during the conversation. I do not recall in just what connection he used this term. I believe he implied that he was being accused of taking bribes, or that, having made payments to him, I might be accused of bribery, or that my payments to him might be construed as bribery. Short (at Chandler) did not give me any advice as to what to do and did not tell me what to say or do if the investigators called. He said that the reason he was in Chandler that evening was because he had been meeting with someone from the state office there that evening.

I had all of my 1956 short staple cotton ginned at the Chandler Gin Company and marketed it through Calcot. I gave them an authorization to place it in the loan program, but, as in 1955, I do not know whether they sold it or placed it under loan.

Regarding the overall matter of my extra allotments and failure to destroy cotton, I have been asked to comment on a number of situations or circumstances which it has been

stated should have put me on notice at the time that there was something wrong or irregular in connection with my transactions and relationship with Short, (following in hand-writing) and which indicated I knew or should have known that there was no "Burns" farm, and that Short was falsifying the records to get me extra cotton acreage, and that I knew this.

It has been stated that the fact that I have paid only $20.00-$25.00 per acre when allotments were bringing up to $75.00 per acre should have indicated to me that there was something wrong. Concerning this, I have not thought about what might be called the going or market price of cotton acreage. In making arrangements with Short I just left it up to him to say how much and we never negotiated about price and it did not occur to me as reflecting anything of an irregular nature.

It has been pointed out that the fact that I planted cotton considerably in excess of my allotments, particularly in 1956, and failed to destroy the excess might indicate that I had an understanding with Short whereby he would take care of me by fixing the ASC office records, or that I had something on him and could get by without destroying my excess cotton. I now realize that it is highly irregular for a farmer to pay money to an employee of the ASC office from which the farm programs are being administered, and that such action could well be construed as an indication of unlawful conduct. In my dealings with Short from the beginning I had not thought of these implications until the meeting with him at Chandler when he mentioned bribery. I did not know that Short was not acting in good faith in these matters. I never thought of myself as being in a position at any time to bring pressure upon him to make it possible, through his connection with a Government office, for me to overplant and not have to destroy excess cotton or to take other advantages.

In my overplanting and failure to destroy the excess cotton, there were also other considerations which made me reluctant to destroy cotton. In 1956 I was over-extended on water, with the result that there were burned areas in my cotton and it looked as if my crop would not be as heavy as expected on that account, thus reducing my income. I was reluctant to destroy any of it because of this. In addition, in connection with the 1955 crop, there was talk among farmers that a lot of them were not destroying their excess cotton, and there was also talk about laxity in administering the program in the ASC office, both in 1955 and 1956. I guess I thought I might get by without plowing up my excess cotton in 1956.

ACP Practices.

I have been shown the Forms in an ACP folder in the ASC office in connection with a 1954 ditch lining practice on my Pinal County farm. According to these documents I requested assistance on a land leveling practice on May 24, 1954 and on May 27, 1954, I requested approval of change to ditch lining. In 1954 I did install about ½ mile of 24-inch cement ditch on a line between the Northeast and Northwest quarters of my farm, but this was in the early spring, as I used this ditch to irrigate my 1954 cotton, and it would have had to be in by February or March. At that time I did not know that it was necessary to sign up for a practice before starting it, and, if as the forms indicate, my land leveling was not approved, I possibly changed to ditch lining to get a payment for the above-mentioned ditch.

I have been shown ACP forms on which certifications of need and performance appear to have been signed by Doyle H. Dunkin, USID. I did not know anyone by that name. I have never had any farming or business connections on the Indian Reservation, or with Reservation offi-

cials. I have never seen these forms before and have no explanation for the information on them. To my knowledge, there was no connection with or between my cotton acreage transactions with Short, or my failure to destroy excess cotton, and the payment to me of this ACP money. I have no explanation for what appears to be an overpayment on this practice, if, in fact, it was intended to cover the approximately ½ mile of ditch installed in the spring of 1954.

My attention has also been called to ACP forms covering a 1954 ditch lining practice on my Maricopa County farm. I recall this practice, but I do not remember the circumstances of signing the application for payment on Form ACP-245 covering this practice, nor the similar form covering the practice in 1954 in Pinal County. With specific reference to the last paragraph above the certifications on these forms, I do not remember the circumstances under which the words "no" were inserted. I do not believe I was aware at that time of the limitation of $1,500.00 maximum which could be paid in any one year to the same farmer for ACP assistance.

I have read the above statement consisting of 8½ pages, typewritten, single-spaced, and it is the truth to the best of my knowledge and belief. I have been given an opportunity to make any changes or corrections desired by me.

(unsigned)
Rex L. Neely

Witness:

Lloyd N. Johnson, Special Agent
Compliance & Investigation Div., CSS
U. S. Department of Agriculture
San Francisco, California

Appendix 4

TABLE OF EXHIBITS

Exhibit: general description	— Exhibit No. — Govt.	Def.	Identified Page No.	Offered Page No.	Re Pa
1954 Listing Sheets	1		33	49	
1955 Listing Sheets	2		33, 64	65	
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1954 Marketing Card Register	4		35	220	2
1955 Marketing Card Register, for Upland cotton	5		37	220	2
1955 Marketing Card Register, for extra long staple cotton	6		36	220	2
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Form 578 for Farm 647, 1955 short staple	11–B		61, 144	145	1
Form 578 for Farm 647, long staple	11–C		61, 146	147	1
Form 578 for Farm 647, 1956 short staple	11–D		62, 114, 213	213	2
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ACP-247, Statement of Need, land leveling	12–B		73	154	1
ACP-245, Report of Performance	12–C		74	154	1
ACP-247, Statement of Need, concrete ditch lining	12–D		74, 150	154	1
ACP-247, Statement of Need, concrete ditch lining	12–E		75, 151	154	1
ACP-245, Report of Performance	12–F		75, 152	154	1
Supervisor's Field Sheet	12–G		239	235	
1956 Marketing Card, Upland Cotton		E	86, 219		

Exhibit: general description	— Exhibit No. — Govt.	Def.	Identified Page No.	Offered Page No.	Received Page No.
r, with MQ-98 and MQ-92 attached, Ellsberry to Neely		F	92	313	313
unty Deed	13–A		104	105	105
unty Deed	13–B		104	105	105
unty Deed	13–C		104	105	105
dated April 4, 1954, $1,620.00, to Short	14–A		127, 129	132	132
dated Nov. 22, 1954, $1,410.00, to Short	14–B		128, 129	132	132
dated Dec. 9, 1955, $1,750.00, Neely ort	14–C		128, 129	132	132
dated March 30, 1954	15		130	131	131
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d Notice of Allotment	18–B		218	218	219
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ak film of checks and deposits, Val- tional Bank, Oct. 9, 1954	22		123		
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Exhibit: general description	— Exhibit No. — Govt.	Def.	Identified Page No.	Offered Page No.	Rec Pag
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ACP Practice Records		O	361	362	
ACP Practice Records		P	361	362	
ACP Practice Records		Q	361	362	
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Grid Sheet	31		460	475	47
Grid Sheet	32		460	475	47
Statement of account, J. E. Patterson to Rex L. Neely		T*	480	480	48

*Defendant's exhibits numbers R and S missing; never used.